S.B.CRIMINAL MISC. PETITION NO.1396/2006
(Baldev Singh Vs. State of Raj. & Anr.)

Date of order : : 12.1.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.Kamal Deep Singh for
Mr.Kulwant Singh, for the petitioner.

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 26.9.2006 passed by learned Sessions Judge, Hanumangarh whereby the revision petition filed by the petitioner against the order of the trial court dt. 15.7.2004 was dismissed.

The brief facts of the case are that the petitioner & Gurjant Singh are nephew and uncle and on 1.7.1999, an agreement was entered between both the parties and attested by Public Notary. The said agreement was kept in the custody of one Harlabh Singh @ Dula Singh. Thereafter, one FIR was lodged by Gurjant Singh under Sections 323, 341, 504, 427, 452, 140 IPC against the present petitioner and four others. The police filed a charge-sheet in the trial court. At the stage of evidence, on

5.7.2004, the petitioner filed an application under Section 91 Cr.P.C. to get the agreement produced in the court. The trial court dismissed the application of the petitioner alleging therein that photo-copy of the said document has been filed and he may cross-examine the prosecution witnesses showing the photo-copy of the agreement dated 1.7.1999. He further observed that the application was filed to cause delay in the matter, however, the petitioner was at liberty to file application again at the time of defence evidence. Learned revisional court also considered the matter and also dismissed the revision petition vide order dated 26.9.2006.

The main contention of learned counsel for the petitioner is that both the courts below have committed illegality in passing the order and not calling the original agreement dated 1.7.1999 is abuse of process of the court. The petitioner cannot cross-examine the witnesses by showing the photo-copy of the agreement and it cannot be exhibited. The original document was necessary. Therefore, he states that in the interest of justice, the application of the petitioner should have been allowed by the learned Magistrate. Learned Sessions Judge has also not

considered the matter in true prospect and committed illegality in dismissing the revision petition filed by the petitioner.

I have considered the submissions advanced by learned counsel for the petitioner and gone through the orders passed by both the courts below. The matter was pending in the trial court at the stage of prosecution evidence when the application under Section 91 Cr.P.C. was filed for calling the agreement dated 1.7.1999 which was in custody of one Harlabh Singh. Learned Magistrate after considering the said aspect has stated that the petitioner can cross-examine the witness by the photo-copy of the said agreement. He also observed that this document was necessary and, therefore, he said that accused may file application again at the time of defence evidence. It is clear from the order itself that this document was very relevant in this case. The witnesses should have been cross-examined by showing them the original document. When original agreement was available with the party then the process should have been issued for calling the said document in the court. Both the courts below have not considered the matter in true prospect and rejected the application under Section 91 Cr.P.C. filed by the

petitioner on superficial ground.

Looking to all the facts and circumstances of the case, the orders passed by both the courts below are set aside and in the interest of justice, the trial court is directed to summon original agreement dated 1.7.1999 in court so that accused-petitioner can cross-examined the witnesses.

With the above observations, this misc. petition is disposed of.

(KRISHAN KUMAR ACHARYA), J.

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